

CITY OF ANN ARBOR
REQUEST FOR PROPOSAL



PROFESSIONAL LAND SURVEYOR SERVICES

RFP No. 883

Proposal Due Date: Friday, February 21, 2014 10:00 AM

Community Services
Parks and Open Space Preservation/Greenbelt Program
Administering Service Area/Unit

Issued By:
City of Ann Arbor
Procurement Unit
301 East Huron Street
Ann Arbor, Michigan 48107-8647

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Section 1

General Information

A. OBJECTIVE

The purpose of this Request for Proposal (RFP No. 883) is to select a qualified land surveying firm(s) to provide professional land surveying services.

B. QUESTIONS OR CLARIFICATIONS OF RFP REQUIREMENTS

All questions regarding this RFP shall be submitted via email. Emailed questions and inquiries will be accepted from any and all prospective Respondent's in accordance with the terms and conditions of this RFP.

All questions or requests for clarification shall be submitted on, or before 3:00 P.M. (Local Time), January 28, 2014 and should be addresses as follows:

RFP 883 Scope of Work/Proposal Content questions emailed to Ginny Trocchio at gtrocchio@a2gov.org

RFP 883 Process and HR Compliance questions to Karen Lancaster, Finance Director at klancaster@a2gov.org

The person making the request shall be held responsible for delivery and verification of receipt.

Should any prospective Respondent be in doubt as to the true meaning of any portion of this Request for Proposal, or should a prospective Respondent find any ambiguity, inconsistency or omission therein, the Respondent shall make a written request for an official interpretation or correction. Such requests must be submitted via email to klancaster@a2gov.org.

C. MANDATORY PRE-PROPOSAL MEETING

A pre-proposal meeting will be held on Monday, January 27, 2014 at 1:00 PM in the 6th floor conference room of City Hall, 301 E. Huron St., Ann Arbor. The purpose of this meeting is to discuss the services required with prospective respondents and to answer any questions concerning RFP No. 883. Any questions and answers furnished will not be official until verified in writing by the Procurement Unit. Answers that change or substantially clarify the proposal will be affirmed in writing. Copies will be provided to all in attendance.

It is mandatory that each interested party attend this meeting. Any Proposal submitted by a party not attending and signing the roster at the pre-proposal meeting will not be opened or considered.

D. PROPOSAL REQUIREMENTS

To be considered, each Respondent must submit a response to this RFP using the format provided in Section III (Information Required and Evaluation criteria). No other distribution of Proposals is to be made by the Respondent. The Proposal must be signed in ink by an official authorized to bind the Respondent to its provisions. Each Proposal must remain valid for at least ninety (90) days from the due date of this RFP.

Proposals should be prepared simply and economically providing a straightforward and concise description of the Respondent's ability to meet the requirements of the RFP. Proposals shall be written in ink or typewritten. No erasures are permitted. Mistakes may be crossed out and corrected and must be initialed in ink by the person signing the Proposal. The proposal shall be no more than 25 pages in length, printed in a double-sided format. Additional information provided in the appendices will not count towards the page limitations.

Each person signing the Proposal certifies that he/she is the person in the Respondent's firm/organization responsible for the decision as to the fees being offered in the Proposal and has not and will not participated in any action contrary to the terms of this provision.

Respondents must submit four (4) copies of the sealed Proposal including the fee proposal in the manner specified in subsection G below.

E. SELECTION CRITERIA

Responses to this RFP will be evaluated using a point system, as shown in Section III. The evaluation will be completed by a selection committee of staff from the City of Ann Arbor.

At the initial evaluation, the fee proposals will not be reviewed. After initial evaluation, the City will determine top applicants, and open only those fee proposals.

The City does not anticipate holding interviews for these services. However, the City has the right to request interviews with selected Respondents when necessary. If the City elects to interview Respondents, during the interviews, the selected firms will be given the opportunity to discuss their Proposal, qualifications, past experience, and their fee proposal in more detail. The City further reserves the right to interview the key personnel assigned by the selected consultant to provide these services. Respondents are expected to be available for interviews if requested.

All Proposals submitted may be subject to clarifications and further negotiation.

All agreements resulting from negotiations that differ from what is represented within the RFP or in the Respondent's response shall be documented and included as part of the final contract.

F. ADDENDUM

All interpretation or correction, as well as any additional RFP provisions that the City may decide to include, will be made only as an official addendum that will be posted to a2gov.org and MITN.info and it shall be the Respondent's responsibility to ensure they have received all addenda before submitting a Proposal. Any addendum issued by the City shall become part of the RFP and will be incorporated in the Proposal.

Each Respondent must in its Proposal, to avoid any miscommunications, acknowledge all addenda which it has received, but the failure of a Respondent to receive, or acknowledge receipt of any addenda shall not relieve the Respondent of the responsibility for complying with the terms thereof.

The City will not be bound by oral responses to inquiries or written responses other than written addenda.

G. SEALED PROPOSAL SUBMISSION

All Proposals are due and must be delivered to the City Procurement Unit on or before **Friday, February 21, 2014 by 10:00 am (local time)**. Proposals submitted late or via oral, telephonic, telegraphic, electronic mail or facsimile **will not** be considered or accepted.

Each Respondent must submit one (1) original Proposal, and (3) three additional Proposal copies in a sealed envelope and two (2) copies of the Fee Proposal in a separate sealed envelope marked fee proposal contained within the Respondent's sealed Proposal.

Proposal submitted must be clearly marked: **RFP 883, PROFESSIONAL LAND SURVEYOR SERVICES** and then list Respondent's name and address.

Proposals must be addressed and delivered to:

City of Ann Arbor
Procurement Unit,
c/o Customer Services, 1st Fl
301 East Huron Street
P.O. Box 8647
Ann Arbor, MI 48107

All Proposals received on or before the Due Date will be publicly opened and recorded immediately. No immediate decisions are rendered.

Hand delivered Proposals will be date/time stamped/signed by the Procurement Unit at the address above in order to be considered. Normal business hours are 9:00 a.m. to 3:00 p.m. Monday through Friday, excluding Holidays.

The City will not be liable to any Respondent for any unforeseen circumstances, delivery or postal delays. Postmarking on the Due Date will not substitute for receipt of the Proposal. Each Respondent is responsible for submission of their Proposal.

Additional time will not be granted to a single Respondent; however, additional time may be granted to all Respondents when the City determines that circumstances warrant it.

A Proposal will be disqualified if the Fee Proposal is not contained within a separate sealed envelope.

H. TYPE OF CONTRACT

A sample of the standard Professional Services Agreement (PSA) is included in Appendix A. Those who wish to submit a Proposal to the City are required to carefully review the Professional Services Agreement. Respondents should specifically note that the Insurance requirements under a City contract are listed in the sample PSA. **The City will not entertain changes to the terms of the standard Professional Services Agreement.**

Under the terms of the PSA services will be provided on per property/ as-needed basis, the selected Land Surveyor firm(s) will receive notice electronically (i.e., email or FAX) of bid properties as they are identified. Optional Survey responsibilities and specifications may be required on an as-needed basis for certain properties. Land Surveyors will normally have one week to review the work statement and electronically submit their bid form for the advertised bid properties. Work will be awarded based on the Land Surveyor firm response to the bid form, statement of qualifications (on file with the Community Services Area Administrator) and the Land Surveyor firm's past performance.

I. COST LIABILITY

The City of Ann Arbor assumes no responsibility or liability for costs incurred by the consultant prior to the execution of a Professional Services Agreement. The liability of the City is limited to the terms and conditions outlined in the Agreement. By submitting a Proposal, Respondent agrees to bear all costs incurred or related to the preparation, submission and selection process for the Proposal.

J. AWARD PROTEST

All Proposal protests must be in writing and filed with the Purchasing Agent within five (5) business days of the award action. The Respondent must clearly state the reasons for the protest. If a Respondent contacts a City Service Area/Unit and indicates a desire to protest an award, the Service Area/Unit shall refer the Respondent to the Purchasing Agent. The Purchasing Agent will provide the Respondent with the appropriate instructions for filing the protest. The protest shall be reviewed by the City Administrator or designee whose decision shall be final.

K. SCHEDULE

The Proposals submitted should define an appropriate schedule in accordance with the requirements of the Proposed Work Plan in Section III.

The following is the anticipated schedule for this RFP and PSA procurement.

Activity/Event	Anticipated Date
Advertise RFP 883	January 13, 2014
Mandatory Pre-Proposal Meeting	January 27, 2014
Question/Clarification Deadline	January 28, 2014
Proposal Deadline	February 21, 2014
Expected City Council Authorization of PSA	May 5, 2014

Note: The above schedule is for information purposes only and is subject to change at the City's discretion.

L. DISCLOSURES

All information in a Respondent's Proposal is subjected to disclosure under the provisions of Public Act No. 442 of 1976 know as the "Freedom of Information

Act'. This act also provides for the complete disclosure of contracts and attachments thereto except where specifically exempted under the Freedom of Information Act.

M. DEBARMENT

Submission of a proposal in response to this RFP is certification that the Respondent is not currently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal departments or agency. Submission is also agreement that the City will be notified of any changes in this status.

N. SUBCONTRACTORS

No contract may be sublet without the written consent of the City of Ann Arbor. Any subcontractor, so approved, shall be bound by the terms and conditions of this contract. The Respondent shall be fully liable for all acts and omissions of its subcontractor(s) and shall indemnify the City of Ann Arbor for such acts or omissions.

O. HUMAN RIGHTS INFORMATION

The City's standard PSA outlines the requirements for fair employment practices under City of Ann Arbor contracts. To establish compliance with this requirement, the Respondent should complete and return with its Proposal completed contract compliance forms. In event they are not, the Respondent will have 24 hours from the City's request to return completed forms. Contract compliance forms are found in Section IV, Attachment B.

P. LIVING WAGE

All Respondent's proposing to do business with the City of Ann Arbor, except those specifically exempted by regulations promulgated by the Administrator and approved by City Council, agree to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code and, if a "covered employer" as defined therein to pay those employees providing services to the City under this agreement a "living wage" as defined in Chapter 23 of the Ann Arbor City code; and, if requested by the City, provide documentation to verify compliance. The Respondent agrees to comply with the provisions of Section 1:815 of Chapter 23 of the Ann Arbor City Code.

The Living Wage form should be submitted with Proposal. In event they are not, the Respondent will have 24 hours from the City's request to return completed

forms. Section 1:815 and Living wage forms are found in Section IV, Attachment C.

Q. CONFLICT OF INTEREST DISCLOSURE

The City of Ann Arbor Purchasing Policy requires that prospective Vendors complete a Conflict of Interest Disclosure form. A contract may not be awarded to the selected Vendor unless and until the Procurement Unit and the City Administrator have reviewed the Disclosure form and determined that no conflict exists under applicable federal, state, or local law or administrative regulation. Not every relationship or situation disclosed on the Disclosure Form may be a disqualifying conflict. Depending on applicable law and regulations, some contracts may awarded on the recommendation of the City Administrator after full disclosure, where such action is allowed by law, if demonstrated competitive pricing exists and/or it is determined the award is in the best interest of the City. A copy of the Vendor Conflict of Interest Disclosure Form is found in Section IV, Attachment D.

R. NON-DISCLOSURE AGREEMENT

The selected respondent will be required to execute a Non-Disclosure Agreement (see Appendix B Sample Agreement).

S. QUALIFICATIONS OF RESPONDENT'S EMPLOYEES

The Respondent shall supply fully trained and competent staff. Any inability by the Respondent to maintain a regular and consistent work force may result in default of contract. All employees shall be bonded under the Respondent's company name.

T. INDEPENDENT FEE DETERMINATION

1. By submission of a proposal, the submitter certifies, and in the case of joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
 - a) They have arrived at the fees in the proposal independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such fees with any other proposal submitter or with any competitor.
 - b) Unless otherwise required by law, the fees which have been quoted in the proposal have not been knowingly disclosed by the submitter and will not knowingly be disclosed by the submitter prior

to award directly or indirectly to any other prospective submitter or to any competitor.

- c) No attempt has been made or shall be made by the proposal submitter to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
- d) Each person signing the proposal certifies that she or he is the person in the proposal submitter's organization responsible within that organization for the decision as to the fees being offered in the proposal and has not participated (and will not participate) in any action contrary to 1.a), b), or c) above.

- 2. A proposal will not be considered for award if the sense of the statement required in the Fee Analysis portion of the proposal has been altered so as to delete or modify 1.a), c), or 2 above. If 1.b) has been modified or deleted, the proposal will not be considered for award unless the submitter furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the Issuing Office determines that such disclosure was not made for the purpose of restricting competition.

U. IRS FORM W9

The selected Respondent will be required to provide the City of Ann Arbor an IRS form W-9.

V. RESERVATION OF RIGHTS

- 1. The City reserves the right in its sole and absolute discretion to accept or reject any or all Proposals or alternative Proposals, in whole or in part, with or without cause.
- 2. The City reserves the right to waive, or not waive, informalities or irregularities in bids or bidding procedures, and to accept or further negotiate cost, terms, or conditions of any bid determined by the City to be in the best interests of the City even though not the lowest bid.
- 3. The City reserves the right to request additional information from any or all Respondent's.
- 4. The City reserves the right not to consider any Proposal which it determines to be unresponsive and deficient in any of the information requested within RFP.

5. The City reserves the right to determine whether the scope of the project will be entirely as described in the RFP, a portion of the scope, or a revised scope to be implemented.
6. The City reserves the right to select one or more Respondent's to perform services.
7. The City reserves the right to retain all Proposals submitted and to use any ideas in a Proposal regardless of whether that Proposal is selected. Submission of a Proposal indicates acceptance by the firm of the conditions contained in this Request for Proposals, unless clearly and specifically noted in the Proposal submitted.
8. The City reserves the right to disqualify Proposals that fail to respond to any requirements outlined in the RFP, or failure to enclose copies of the required documents outlined within the RFP.

Section 2

Scope of Services

INTRODUCTION AND OVERVIEW

The City of Ann Arbor is requesting proposals and statement of qualifications from Professional Land Survey firms who have experience in preparing legal property descriptions and ALTA/ACSM surveys of residential, agricultural and open space properties.

Land Survey work must be performed by a licensed certified professional Land Surveyor. The City will be reviewing these qualifications and selecting licensed qualified Land Surveyor firms to provide competitive quotations on various Land Survey requests, which will include at minimum legal property description, boundary line survey of property showing all typography, easements, encumbrances, infrastructure and encroachments, if any, or any other apparent condition of the property in connection with the City of Ann Arbor Parks and Open Space Program (commonly known as the Parks/Greenbelt Program) acquisitions.

The City estimates it may purchase approximately 7-10 properties/property interests in the next few years, some will be fee simple purchases, but the majority will be the purchase of conservation easements. Services will be requested from the successful firm on an "as needed basis" throughout the contract period. It is estimated that properties ranging in size of .3 to 200 acres will be evaluated.

The City will choose, and may execute contracts with, up to three (3) qualified firms for one (1) year with the option of two (2) one-year renewals. The term of this non-exclusive agreement will tentatively commence in March 2014. Award of a contract for these services is subject to the approval of City Council and negotiation of a satisfactory contract for services.

BACKGROUND INFORMATION

In November 2003, City of Ann Arbor voters approved a ballot proposal commonly known as the Parks and Greenbelt Ballot Proposal. The purpose of the ballot proposal is to provide funds to preserve and protect open space, natural habitats, and the city's source waters inside and outside the city limits. The voters authorized a one-half mill tax for 30 years, to replace the existing Land Acquisition Millage of .5 mill that expired in 2004 to provide funds for preservation and protection of parkland, open space, natural habitats, and city source waters by the acquisition and management of land and land rights within and outside the City of Ann Arbor.

On May 3, 2004, the Ann Arbor City Council adopted Chapter 42, "Open Space and Parkland Preservation," of the Ann Arbor City Code. The Chapter establishes and

defines a Greenbelt District and the criteria and selection process for purchase of development rights (PDR) and other property rights within the District, specifically:

- A. Only land voluntarily offered by the owner will be considered.
- B. Whenever possible, purchases of land, land rights, and conservation easements outside the city limits will be achieved using all available funding sources including: joint purchase agreements with owners, townships, cities and county; state and federal grants; land conservancies and trusts.
- C. Greenbelt acquisitions that fulfill the following criteria will be preferred
 - i. Purchases where the city's cost does not exceed 1/3 of the appraised land value;
 - ii. Purchases that partner with a township or other governmental agency;
 - iii. Conservation easements are preferred to outright purchase;
 - iv. Purchases with matching state or federal grants;
 - v. Proximity to the city limits;
 - vi. Desirable characteristics of the property (natural beauty, species diversity, age of trees, presence of streams and wetlands, proximity to the Huron River); Size;
 - vii. Proximity to other protected lands;
 - viii. Current or projected future use of adjacent property;
 - ix. Management proposals that incorporate joint agreements with purchase partners.

The City of Ann Arbor has contracted with The Conservation Fund to assist in the implementation of its Parks and Open Space Program. A Land Surveyor Firm will be expected to work with The Conservation Fund in the preparation of survey reports. The City and / or The Conservation Fund on behalf of the City, will provide the following information public record, to the extent available, to assist in preparation of the survey: GIS aerial photo map of the property with the property boundaries delineated; if applicable additional aerial photos showing floodplain or other features; GIS cadastral map with the location of the property; legal description of the property from the deed; preliminary title commitment on the property; landowner contact information including name, address, phone and e-mail if applicable; if the property is on the market listing sheet and relevant information provided by the realtor; tax parcel number and property address; and soil map outlining prevalence of varying soil types within property boundaries.

Any information provided from the public record is provided for informational purposes only and the City makes no guarantee as to the completeness or accuracy of the information.

SCOPE OF SERVICES

Land Survey work must be performed by a licensed certified professional Land Surveyor, and be prepared to the minimum Standard Detail Requirements adopted by the American Land Title Association (ALTA) and American Congress on Surveying and Mapping (ACSM) for ALTA/ACSM Land Title Surveys (2011 Standards (effective

2/23/11) or successor). In addition surveyors must conduct their surveys in accordance with all applicable jurisdictional requirements and standards of practice.

Survey produced must include at a minimum legal property description, boundary line survey of property showing all topography, easements, encumbrances, infrastructure and encroachments, if any, or any other apparent condition of the property in connection with the City of Ann Arbor Parks and Open Space Program (commonly known as the Parks/Greenbelt Program) acquisitions.

The survey must include the surveying company's name, address, phone number, surveyor's name, a north arrow and a legend for symbols. Legal descriptions are to be by metes and bounds, unless otherwise specified. The description is to be traced on the survey drawing itself and must "close." Any discrepancy between the survey legal description and the legal description provided to the Land Surveyor as part of the Work Statement must be identified.

Surveys must be certified to the City and the title insurance company (if requested) and contain a ALTA/ACSM certification statement or other applicable certification statement from the surveyor that the survey is true and correct in connection with the type of survey requested.

Land Surveyor will provide an original and two copies of its survey/survey report of the property described

Intent of Proposed Scope

Additional work necessary to meet the intent of the proposed should be included in Proposals.

SECTION 3

INFORMATION REQUIRED FROM ALL PROPOSAL SUBMITTERS

Submitters should organize Proposals into the following Sections:

- A. Professional Qualifications
- B. Past Involvement Providing Similar Services
- C. Fee Proposal (include in a separate sealed envelope)
- D. Authorized Negotiator
- E. Attachments

The following Section describes the elements that should be included in each of these proposal sections and the weighted point system that will be used for evaluation of the proposals.

A. Professional Qualifications – 40 points

1. State the full name and address of your organization and, if applicable, the branch office or other subordinate element that will perform, or assist in performing, the work hereunder. Indicate whether it operates as an individual, partnership, or corporation. If as a corporation, include whether it is licensed to operate in the State of Michigan.
2. State the specific qualifications that demonstrate the firm meets the City's minimum qualifications of land surveyor / land surveyor firm
 - Licensed Professional Surveyor in the State of Michigan.
 - Minimum five (5) years continuous business operation.
 - Certification from a recognized professional surveyor association (i.e. National Society of Professional Surveyors (NSPS))
 - Experience providing the following types of survey information for residential, agricultural and open space properties on a time sensitive basis:
 - Land descriptions, including those involving disputed boundaries or defective deed descriptions
 - Reconciliation of past and present measurements
 - Subdivision of sections
 - Ability to prepare and certify land title survey in accordance minimum standard detail requirements for current ALTA/ACSM land title surveys and accuracy standards for ALTA/ACSM land title surveys as adopted by American Land Title Association, American Congress on Surveying & Mapping and the National Society of Professional Surveyors.
 - A list of clients (including name of contact, address, phone numbers and descriptions of work performed) for which similar

projects have been performed. Name and qualifications of key personnel involved should be identified.

- Ability and commitment to provide continuous professional service during the contract period on a time sensitive basis.
3. Include the name of executive and professional personnel by skill and qualification that will be employed in the work. Show where these personnel will be physically located during the time they are engaged in the work. Indicate which of these individuals you consider key to the successful completion of the project. Identify only individuals who will do the work on this project by name and title. Resumes and qualifications are required for all proposed project personnel.
 4. State history of the firm, in terms of length of existence, types of services provided, etc. Identify the technical details which make the firm qualified for this work.
 5. Describe any additional services available through your Firm and how the availability of these services can be beneficial to the City

B. Past Involvement Providing Similar Services - 30 points

The proposal must also indicate proven ability to complete similar services in a time sensitive manner within the budgeted amounts.

A list of references for surveying services for work performed in the last three (3) years must be included. The list shall include contact name, owner name, address, and phone number, the type of survey work, size of property, and number of days to complete

C. Fee Proposal - 30 points

Fee quotations shall be submitted in a separate sealed envelope as part of the proposal. Fee quotations are to include the names, title, hourly rates, overhead factors, and any other details by which the overall and project element costs have been derived. The fee quotation is to relate in detail to each item of the proposed work plan. Consultants shall be capable of justifying the details of the fee proposal relative to personnel costs, overhead, how the overhead rate is derived, material and time.

D. Authorized Negotiator

Include the name and phone number of persons(s) in your organization authorized to negotiate the Scope of Work with the City.

E. Attachments

The following attachments must be included with the proposal submission:

- Attachment A: - Legal Status of Respondent
- Attachment B – Contract Compliance Forms
- Attachment C – Living Wage Declaration of Compliance Form
- Attachment D – Vendor Conflict of Interest Disclosure Form

Additional information, such as resumes of key personnel may be attached to the proposal.

F. Proposal Evaluation

The Selection Committee may include representatives from the Community Services Area, and Open Space and Parkland Preservation Program staff. Members of the Selection Committee will evaluate each proposal by the above described criteria and point system (A and B) to select a short list of firms for further consideration. The City reserves the right to not consider any proposal which it determines to be unresponsive and deficient in any of the information requested for evaluation. A proposal with all the requested information does not guarantee the proposing firm to be a candidate for an interview. The Committee may contact references to verify material submitted by the Proposers. Fee Proposals (C) will only be opened after the initial evaluation has been completed. The City will determine whether the final scope of the project to be negotiated will be entirely as described in this RFP, a portion of the scope, or a revised scope.

SECTION 4
ATTACHMENTS

- Attachment A: - Legal Status of Respondent
- Attachment B – Contract Compliance Forms
- Attachment C – Living Wage Declaration of Compliance Form
- Attachment D – Vendor Conflict of Interest Disclosure Form

ATTACHMENT A

LEGAL STATUS OF RESPONDENT

(The Respondent shall fill out the provision and strike out the remaining ones.)

The Respondent is:

- A corporation organized and doing business under the laws of the state of _____, for whom _____ bearing the office title of _____, whose signature is affixed to this proposal, is authorized to execute contracts on behalf of respondent.*

*If not incorporated in Michigan, please attach the corporation's Certificate of Authority

- A limited liability company doing business under the laws of the state of _____, whom _____ bearing the title of _____ whose signature is affixed to this proposal, is authorized to execute contract on behalf of the LLC.

- A partnership organized under the laws of the state of _____ and filed with the county of _____, whose members are (attach list including street and mailing address for each.)

- An individual, whose signature with address, is affixed to this RFP.

Respondent has examined the basic requirements of this RFP and its scope of services, including all Addendum (if applicable) and hereby agrees to offer the services as specified in the RFP.

Signature Date: _____,

(Print) Name _____ Title _____

Firm: _____

Address: _____

Contact Phone _____ Fax _____

Email _____

ATTACHMENT B

FAIR EMPLOYMENT PRACTICE

The consultant, its agents or sub-contractors, shall comply with all requirements of Chapter 112 of Title IX of the Code of the City of Ann Arbor and in particular the following excerpts therefrom:

9:161 NONDISCRIMINATION BY CITY VENDORS

- (1) All vendors proposing to do business with the City of Ann Arbor shall satisfy the nondiscrimination administrative policy adopted by the City Administrator in accordance with the guidelines of this section. All vendors shall receive approval from the Director prior to entering into a contract with the City, unless specifically exempted by administrative policy. All City vendors shall take affirmative action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon race, national origin or sex.
- (2) Each prospective vendor shall submit to the City data showing current total employment by occupational category, sex and minority group. If, after verifying this data, the Director concludes that it indicates total minority and female employment commensurate with their availability within the vendor's labor recruitment area, i.e., the area from which the vendor can reasonably be expected to recruit, said vendor shall be accepted by the Director as having fulfilled affirmative action requirements for a period of one year at which time the Director shall conduct another review. Other vendors shall develop an affirmative action program in conjunction with the Director. Said program shall include specific goals and timetables for the hiring and promotion of minorities and females. Said goals shall reflect the availability of minorities and females within the vendor's labor recruitment area. In the case of construction vendors, the Director shall use for employment verification the labor recruitment area of the Ann Arbor-Ypsilanti standard metropolitan statistical area. Construction vendors determined to be in compliance shall be accepted by the Director as having fulfilled affirmative action requirements for a period of six (6) months at which time the Director shall conduct another review.
- (3) In hiring for construction projects, vendors shall make good faith efforts to employ local persons, so as to enhance the local economy.
- (4) All contracts shall include provisions through which the vendor agrees, in addition to any other applicable Federal or State labor laws:

- (a) To set goals, in conference with the Human Resources Director, for each job category or division of the work force used in the completion of the City work;
 - (b) To provide periodic reports concerning the progress the vendor has made in meeting the affirmative action goals it has agreed to;
 - (c) To permit the Director access to all books, records and accounts pertaining to its employment practices for the purpose of determining compliance with the affirmative action requirements.
- (5) The Director shall monitor the compliance of each vendor with the nondiscrimination provisions of each contract. The Director shall develop procedures and regulations consistent with the administrative policy adopted by the City Administrator for notice and enforcement of non-compliance. Such procedures and regulations shall include a provision for the posting of vendors not in compliance.
- (6) All City contracts shall provide further that breach of the obligation not to discriminate shall be a material breach of the contract for which the City shall be entitled, at its option, to do any or all of the following:
- (a) To cancel, terminate, or suspend the contract in whole or part and/or refuse to make any required periodic payments under the contract;
 - (b) Declare the vendor ineligible for the award of any future contracts with the City for a specified length of time;
 - (c) To recover liquidated damages of a specified sum, said sum to be that percentage of the labor expenditure for the time period involved which would have accrued to minority group members had the affirmative action not been breached;
 - (d) Impose for each day of non-compliance, liquidated damages of a specified sum, based upon the following schedule:

<u>Contract Amount</u>	Assessed Damages Per Day of <u>Non-Compliance</u>
\$ 10,000 - 24,999	\$25.00
25,000 - 99,999	50.00
100,000 - 199,999	100.00
200,000 - 499,999	150.00
500,000 - 1,499,999	200.00
1,500,000 - 2,999,999	250.00
3,000,000 - 4,999,999	300.00
5,000,000 - and above	500.00

- (e) In addition the vendor shall be liable for any costs or expenses incurred by the City of Ann Arbor in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under this contract.

INSTRUCTIONS FOR COMPLETING CONTRACT COMPLIANCE FORM

City Policy

The “non discrimination in contracts” provision of the City Code, (Chapter 112, Section 9:161) requires contractors/respondents/grantees doing business with the City not to discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, condition of pregnancy, marital status, physical or mental limitations, source of income, family responsibilities, educational association, sexual orientation, gender identity or HIV status against any of their employees, any City employee working with them, or any applicant for employment. It also requires that the contractors/respondents/grantees include a similar provision in all subcontracts that they execute for City work or programs.

This Ordinance further requires that each prospective contractor/respondent submit employment data to the City showing current total employee breakdown by occupation, race and gender. This allows the Human Rights Office to determine whether or not the contractor/respondent has a workforce that is reflective of the availability of women and under-represented minorities within the contractor’s labor recruitment area (the area where they can reasonably be expected to recruit employees). ***This data is provided to the City on the Human Rights Contract Compliance Forms (attached).***

To complete the form:

- 1) **If a company has more than one location, then that company must complete 2 versions of the form.**
 - **Form #1** should contain the employment data for the **entire corporation**.
 - **Form #2** should contain the employment data for those employees:
 - who will be working on-site;
 - in the office responsible for completing the contract; or,
 - in the case of non-profit grantees, those employees working on the project funded by the City grant(s).
- 2) If the company has only one location, fill out Form #1 only.
- 3) Complete all data in the upper section of the form including the name of the person who completes the form and the name of the company/organization’s president.
- 4) Complete the Employment Data in the remainder of the form. Please be sure to complete all columns including the Total Columns on the far right side of the form, and the Total row and Previous Year Total row at the bottom of the form.
- 5) Return the completed form(s) to *your contact* in the City Department for whom you will be conducting the work.

For assistance in completing the form, contact:

Procurement Office of the City of Ann Arbor
734/794-6576

If a contractor is determined to be out of compliance, the Procurement Office will work with them to assist them in coming into compliance

CITY OF ANN ARBOR PROCUREMENT OFFICE
HUMAN RIGHTS CONTRACT COMPLIANCE FORM
Entire Organization (Totals for All Locations where applicable)

FO

Name of Company/Organization _____ Date Form Completed _____

Name and Title of Person Completing this Form _____ Name of President _____

Address _____ County _____ Phone # _____
(Street address) (City) (State) (Zip) (Area Code)

Fax# _____ Email Address _____
(Area Code)

EMPLOYMENT DATA

Job Categories	Number of Employees (Report employees in only one category)												
	Male						Female						
	White	Black or African American	Asian	Hispanic or Latino	Native Hawaiian or Other Pacific Islander	American Indian or Alaska Native	White	Black or African American	Asian	Hispanic or Latino	Native Hawaiian or Other Pacific Islander	American Indian or Alaskan Native	
	A	B	C	D	E	F	G	H	I	J	K	L	
Exec./Sr. Level Officials													
Supervisors													
Professionals													
Technicians													
Sales													
Admin. Support													
Craftspeople													
Operatives													
Service Workers													
Laborers/Helper													
Apprentices													
Other													
TOTAL													
PREVIOUS YEAR TOTAL													

CITY OF ANN ARBOR PROCUREMENT OFFICE
HUMAN RIGHTS CONTRACT COMPLIANCE FORM
Local Office (Only those employees that will do local or on-site work, if applicable)

Form #

Name of Company/Organization _____ Date Form Completed _____

Name and Title of Person Completing this Form _____ Name of President _____

Address _____ County _____ Phone # _____
 (Street address) (City) (State) (Zip) (Area Code)

Fax# _____ Email Address _____
 (Area Code)

EMPLOYMENT DATA

Job Categories	Number of Employees (Report employees in only one category)												TOTAL COLUMN A-L
	Male						Female						
	White	Black or African American	Asian	Hispanic or Latino	Native Hawaiian or Other Pacific Islander	American Indian or Alaska Native	White	Black or African American	Asian	Hispanic or Latino	Native Hawaiian or Other Pacific Islander	American Indian or Alaskan Native	
	A	B	C	D	E	F	G	H	I	J	K	L	
Exec/Sr. Level Officials													
Supervisors													
Professionals													
Technicians													
Sales													
Admin. Support													
Craftspeople													
Operatives													
Service Workers													
Laborers/Helper													
Apprentices													
Other													
TOTAL													
PREVIOUS YEAR TOTAL													

ATTACHEMENT C

LIVING WAGE REQUIREMENTS

If a "covered employer," Contractor will comply with all the requirements of Chapter 23 of the Ann Arbor City Code (Sections 1:811 B 1:821), in particular but not limited to the following sections thereof:

1:813. Definitions.

For purposes of this Chapter, the following definitions shall apply:

- (1) "Contractor/vendor" is a person or entity that has a contract with the City primarily for the furnishing of services where the total amount of the contract or contracts with the City exceeds \$10,000 for any 12month period. "Contractor/vendor" does not include a person or entity that has a contract with the City primarily for the purchase of goods or property, or for the lease of goods or property to or from the City.
- (2) "Covered Employee" means a person employed by a covered employer to perform services which are covered or funded by the contract with or grant from the City; provided, however, that persons who are employed pursuant to federal, state or local laws relating to prevailing wages shall be exempt from this Chapter.
- (3) "Covered Employer" means a contractor/vendor or grantee that has not been granted an exemption from this Chapter pursuant to Section 1:817.
- (4) "Employee" means an individual who provides personal services performed for wages under any contract calling for the performance of personal services, whether written or oral, express or implied. The term "employee" does not include any individual who volunteers to perform services for an employer if
 - (a) The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
 - (b) Such services are not the same type of services which the individual is employed to perform for such employer.
- (5) "Employee Health Benefits" or "Health Benefits" means providing health care benefits for employees (or employees and their dependents) at employer cost or making an employer contribution toward the purchase of such health care benefits for employees (or employees and their dependents), provided that the employer cost or contribution equals no less than \$1 an hour for the average work week of such employee, and provided further that any employee payment or contribution toward health care shall not exceed 50 cents an hour for the average work week for such employee.

- (6) "Grant" means any form of financial assistance to a "Grantee" as set forth and defined in Section 1:813(7). "Grant" does not include financial assistance used for the purchase or lease of property or other nonpersonnel costs.
- (7) "Grantee" is a person or entity that is a recipient of any financial assistance from the City in the form of any federal, state or local grant program administered by the City, revenue bond financing, tax increment financing, tax abatement, tax credit, direct grant, or any other form of financial assistance that exceeds \$10,000 for any 12month period, including any contractors, subcontractors, or leaseholders of the grantee whose contract, subcontract or lease with the grantee exceeds \$10,000 for any 12month period.
- (8) "Living Wage" means a wage equal to the levels established in Section 1:815.
- (9) "Person" means any individual, copartnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.
- (10) "\$10,000 for any 12 month period" is computed by taking the total amount of the contract, grant or loan and dividing it by the number of months the contract, grant or loan covers.

1:814. Applicability.

- (1) This Chapter shall apply to any person that is a contractor/vendor or grantee as defined in Section 1:813 that employs or contracts with five (5) or more individuals; provided, however, that this Chapter shall not apply to a nonprofit contractor/vendor or nonprofit grantee unless it employs or contracts with ten (10) or more individuals.
- (2) This Chapter shall apply to any grant, contract, or subcontract or other form of financial assistance awarded to or entered into with a contractor/vendor or grantee after the effective date of this Chapter and to the extension or renewal after the effective date of this Chapter of any grant, contract, or subcontract or other form of financial assistance with a contractor/vendor or grantee.

1:815. Living Wages Required.

- (1) Every contractor/vendor or grantee, as defined in Section 1:813, shall pay its covered employees a living wage as established in this Section.
 - (a) For a covered employer that provides employee health care to its employees, the living wage shall be \$8.70 an hour, or the adjusted amount hereafter established under Section 1:815(3).

- (b) For a covered employer that does not provide health care to its employees, the living wage shall be \$10.20 a hour, or the adjusted amount hereafter established under Section 1:815(3).
- (2) In order to qualify to pay the living wage rate for covered employers providing employee health care under subsection 1:815(1)(a), a covered employer shall furnish proof of said health care coverage and payment therefor to the City Administrator or his/her designee.
- (3) The amount of the living wage established in this Section shall be adjusted upward no later than April 30, 2002, and every year thereafter by a percentage equal to the percentage increase, if any, in the federal poverty guidelines as published by the United States Department of Health and Human Services for the years 2001 and 2002. Subsequent annual adjustments shall be based upon the percentage increase, if any, in the United States Department of Health and Human Services poverty guidelines when comparing the prior calendar year's poverty guidelines to the present calendar year's guidelines. The applicable percentage amount will be converted to an amount in cents by multiplying the existing wage under Section 1.815(1)(b) by said percentage, rounding upward to the next cent, and adding this amount of cents to the existing living wage levels established under Sections 1:815(1)(a) and 1:815(1)(b). Prior to April 1 of each calendar year, the City will notify any covered employer of this adjustment by posting a written notice in a prominent place in City Hall, and, in the case of a covered employer that has provided an address of record to the City, by a written letter to each such covered employer.

1:816. Employees Covered.

A covered employer shall pay each of its employees performing work on any covered contract or grant with the City no less than a living wage as defined in Section 1:815.

1:817. Exemptions.

Notwithstanding any other provisions in this Chapter, the following exemptions shall apply:

- (1) Sweat equity contracts for home construction or rehabilitation grant will not subject the grantee to coverage under this Chapter. Housing construction or rehabilitation grants or contracts that are passed through to a contractor in their entirety are exempt from the provisions of this Chapter, even when the City participates in the selection of the contractor.
- (2) For any contract or grant, the City Council may grant a partial or complete exemption from the requirements of this Chapter if it determines one of the following:

- (a) To avoid any application of this Chapter that would violate federal, state or local law(s); or
 - (b) The application of this Chapter would cause demonstrated economic harm to an otherwise covered employer that is a nonprofit organization, and the City Council finds that said harm outweighs the benefits of this Chapter; provided further that the otherwise covered nonprofit employer shall provide a written plan to fully comply with this Chapter within a reasonable period of time, not to exceed three years, and the City Council then agrees that granting a partial or complete exemption is necessary to ameliorate the harm and permit the nonprofit organization sufficient time to reach full compliance with this Chapter.
- (3) A loan shall be considered a grant under this ordinance only to the extent that a loan is provided at below market interest rates and then only the difference between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan, shall be treated as financial assistance under this ordinance.
- (4) A payment of funds for the purpose of purchasing services, property, or goods on behalf of individuals being assisted by a covered employer or potentially covered employer (sometimes known as a "pass through" grant) that is used for said purchases shall not be considered a grant; such funds shall be considered a grant only to the extent that any such funds are retained by the covered employer or potentially covered employer to provide financial assistance and support to its own operations.

1:818. Monitoring and Enforcement.

- (1) Every covered employer shall agree to the payment of a living wage as a condition of entering into or renewing a covered contract or grant with the City, shall agree to post a notice regarding the applicability of this Chapter in every work place or other location in which employees or other persons contracted for employment are working, and shall agree to provide payroll records or other documentation as deemed necessary within ten (10) business days from the receipt of the City's request. All City contracts and grants covered by this Chapter shall provide that a violation of the living wage requirements of this Chapter shall be a material breach of the contract or grant. The Human Rights Office of the City shall monitor the compliance of each contractor/vendor or grantee under procedures developed by the Human Rights Office and approved by the City Administrator.
- (2) Each covered employer shall submit to the Human Rights Office of the City information regarding number of employees and applicable wage rates of its employees covered by this Chapter in such manner as requested by that office. At the request of the Human Rights Office, any contractor/vendor or grantee shall

provide satisfactory proof of compliance with the living wage provisions of this Chapter.

- (3) Any person may submit a complaint or report of a violation of this Chapter to the Human Rights Office. Upon receipt of such a complaint or report, the Human Rights Office shall investigate to determine if there has been a violation.

1:819. Penalties and Enforcement.

- (1) A violation of any provision of this Chapter is a civil infraction punishable by a fine of not more than \$500.00 plus all costs of the action. The Court may issue and enforce any judgment, writ, or order necessary to enforce this Chapter, including payment to the affected employee or employees of the difference between wages actually paid and the living wage that should have been paid, interest, and other relief deemed appropriate.
- (2) Each day upon which a violation occurs shall constitute a separate violation.
- (3) In addition to enforcement under Subsections (1) and (2), the City shall have the right to modify, terminate, and/or seek specific performance of any contract or grant with an affected covered employer or to cancel, terminate or suspend the contract in whole or in part and/or to refuse any further payments under the contract or grant;
- (4) Nothing contained in this Chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any other person for the correction of violations of this Chapter

1:821. Other Provisions.

- (1) No affected covered employer shall reduce the compensation, wages, fringe benefits, or leave available to any covered employee or person contracted for employment in order to pay the living wage required by this Chapter.
- (3) No employee covered by a federal, state or local law requiring the payment of prevailing wages shall be covered by this Chapter.
- (4) This Chapter shall not be construed to apply to any person or entity that is a tax exempt religious, educational or charitable organization under state or federal law, but is not a contractor/vendor or grantee as defined in Section 1:813.
- (5) This Chapter shall not be applicable to the establishment and/or continuation of the following if developed specifically for high school and/or college students:
 - (a) A bona fide training program;
 - (b) A summer or youth employment program;
 - (c) A work study, volunteer/public service, or internship program.

CITY OF ANN ARBOR
LIVING WAGE ORDINANCE
DECLARATION OF COMPLIANCE

The Ann Arbor Living Wage Ordinance (Section 1:811-1:821 of Chapter 23 of Title I of the Code) requires that employers providing services to the City or recipients of grants for financial assistance (in amounts greater than \$10,000 in a twelve-month period of time) pay their employees who are working on the City project or grant, a minimum level of compensation known as the **Living Wage**. This wage must be paid to the employees for the length of the contract/project.

Companies employing fewer than 5 persons and non-profits employing fewer than 10 persons are exempt from the Ordinance. If this exemption applies to your firm, please check below:

_____ This **company** is exempt due to the fact that we employ or contract with fewer than 5 individuals.

_____ This **non-profit agency** is exempt due to the fact that we employ or contract with fewer than 10 employees.

The Ordinance requires that all contractors/vendors and/or grantees agree to the following terms:

- a) To pay each of its employees performing work on any covered contract or grant with the City, no less than the living wage, which is defined as \$12.52/hour when health care is provided, or no less than \$13.96/hour for those employers that do *not* provide health care. It is understood that the Living Wage will be adjusted each year on April 30, and covered employers will be required to pay the adjusted amount thereafter. The rates stated above include any adjustment for 2013.
- b) Please check the boxes below which apply to your workforce:
 - Employees who are assigned to *any covered* City project or grant will be paid at or above the applicable living wage without health benefits Yes_____ No_____

OR

- Employees who are assigned to *any covered* City project or grant will be paid at or above the applicable living wage with health benefits Yes_____ No_____
- c) To post a notice approved by the City regarding the Living Wage Ordinance in every work place or other location in which employees or other persons contracting for employment are working.
- d) To provide the City payroll records or other documentation as requested; and,
- e) To permit access to work sites to City representatives for the purposes of monitoring compliance, investigating complaints or non-compliance.

The undersigned authorized representative hereby obligates the contractor/vendor or grantee to the above stated conditions under penalty of perjury and violation of the Ordinance.

Company Name

Address, City, State, Zip

Signature of Authorized Representative

Phone (area code)

Type or Print Name and Title

Email address

Date signed

Questions about this form? Please contact:
Procurement Office City of Ann Arbor
Phone: 734/794-6500

Revised 3/2013

**CITY OF ANN ARBOR
LIVING WAGE ORDINANCE**

RATE EFFECTIVE APRIL 30, 2013 - ENDING APRIL 29, 2014

\$12.52 per hour

If the employer provides health
care benefits*

\$13.96 per hour

If the employer does **NOT**
provide health care benefits*

Employers providing services to or for the City of Ann Arbor or recipients of grants or financial assistance from the City of Ann Arbor for a value of more than \$10,000 in a twelve-month period of time must pay those employees performing work on a City of Ann Arbor contract or grant, the above living wage.

ENFORCEMENT

The City of Ann Arbor may recover back wages either administratively or through court action for the employees that have been underpaid in violation of the law. Persons denied payment of the living wage have the right to bring a civil action for damages in addition to any action taken by the City.

Violation of this Ordinance is punishable by fines of not more than \$500/violation plus costs, with each day being considered a separate violation. Additionally, the City of Ann Arbor has the right to modify, terminate, cancel or suspend a contract in the event of a violation of the Ordinance.

* Health Care benefits include those paid for by the employer or making an employer contribution toward the purchase of health care. The employee contribution must not exceed \$.50 an hour for an average work week; and the employer cost or contribution must equal no less than \$1/hr for the average work week.

The Law Requires Employers to Display This Poster Where Employees Can Readily See It.

**For Additional Information or to File a Complaint Contact
Karen Lancaster at 734/794-6500 or Klancaster@a2gov.org**

ATTACHEMENT D



Vendor Conflict of Interest Disclosure Form

All vendors interested in conducting business with the City of Ann Arbor must complete and return the Vendor Conflict of Interest Disclosure Form in order to be eligible to be awarded a contract. Please note that all vendors are subject to comply with the City of Ann Arbor's conflict interest policies as stated within the certification section below.

If a vendor has a relationship with a City of Ann Arbor official or employee, an immediate family member of a City of Ann Arbor official or employee, the vendor shall disclose the information required below.

Certification: I hereby certify that to my knowledge, there is no conflict of interest involving the vendor named below:

1. No City official or employee or City employee's immediate family member has an ownership interest in vendor's company or is deriving personal financial gain from this contract.
2. No retired or separated City official or employee who has been retired or separated from the City for less than one (1) year has an ownership interest in vendor's Company.
3. No City employee is contemporaneously employed or prospectively to be employed with the vendor.
4. Vendor hereby declares it has not and will not provide gifts or hospitality of any dollar value or any other gratuities to any City employee or elected official to obtain or maintain a contract.
5. Please note any exceptions below:

Vendor Name	Vendor Phone Number
Conflict of Interest Disclosure *	
Name of City of Ann Arbor employees, elected officials, or immediate family members with whom there maybe a potential conflict of interest.	<input type="checkbox"/> Relationship to employee _____ <input type="checkbox"/> Interest in vendor's company _____ <input type="checkbox"/> Other _____

*Disclosing a potential conflict of interest does not disqualify vendors. In the event vendors do not disclose potential conflicts of interest and they are detected by the City, vendor will be exempt from doing business with the City.

I certify that the information provided is true and correct by my signature below:

 Signature of Vendor Authorized Representative Date Printed Name of Vendor Authorized Representative

PROCUREMENT USE ONLY

- Yes, named employee was involved in Bid / Proposal process.
- No, named employee was not involved in procurement process or decision.

APPENDIX A – SAMPLE CONTRACT

AGREEMENT BETWEEN

AND THE CITY OF ANN ARBOR FOR PROFESSIONAL SERVICES

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St., Ann Arbor, Michigan 48104 ("City"), and _____

_____ ("Consultant") a(n) _____

_____ (State where organized)

_____ (Partnership, Sole Proprietorship, or Corporation)

with its address at _____ agree as follows on this

_____ day of _____, 20____.

The Consultant agrees to provide professional services to the City under the following terms and conditions:

I. DEFINITIONS

Administering Service Area/Unit means _____.

Contract Administrator means _____, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for or delivered to City by Consultant under this Agreement

Project means _____.
Project name; File and Subfile No.

Work Statement means a request for specific services or deliverables by the City, a proposal of Consultant, or another written instrument that meets the following requirements:

1. Includes substantially the following statement: "This is a Work Statement under Consultant Services Agreement Dated"
2. Is signed on behalf of both parties by their authorized representatives. The required signatures for the City are: (a) City Administrator; (b) Administrator of the Administering Service Area/Unit approved as to substance; and (c) City Attorney approved as to form and content.
3. Contains the following three mandatory items:
 - a. Description and/or specifications of the services to be performed and the Deliverables to be delivered to City
 - b. The amount of payment
 - c. The time schedule for performance and for delivery of the Deliverables

In addition, when applicable, the Work Statement may include such other terms and conditions as may be mutually agreeable between parties.

II. DURATION

This Agreement shall become effective on _____, 20____, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in this Agreement.

This Agreement may be renewed, if deemed in the best interest of the City for ___ additional ___ year periods on the same terms and conditions. If the City elected to renew the Agreement it shall provide ___ days notice prior to the termination date of the Agreement, or any renewal term thereof, of its election to the Consultant.

III. SERVICES

- A. The Consultant agrees to provide professional land surveyor services ("Services") in connection with the Project as described in Exhibit A. Specific projects within the scope may be described from time to time by the City for performance within a Work Statement. Upon acceptance of the Work by Consultant, the Work Statement shall become part of this Agreement and shall be performed in accordance with its described scope. The City retains the right to make changes to the quantities of service within the general scope of the Agreement or within a Work Statement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.

The Consultant understands that there is no guarantee or implied promise of any nature that any Work Statements at all will be issued and that the City is under no obligation to issue or consent to any Work Statements.

- B. Quality of Services under this Agreement shall be of the level of professional quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Consultant shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- D. The Consultant may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. COMPENSATION OF CONSULTANT

- A. The Consultant shall be paid in the manner set forth in Exhibit B or the applicable Work Statement . Payment shall be made monthly, unless another payment term is specified in Exhibit B or applicable Work Statement, following receipt of invoices submitted by the Consultant, and approved by the Contract Administrator. Total compensation payable for all Services performed during the term of this Agreement shall not exceed _____(\$_____).
- B. The Consultant will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be payable according to the fee schedule in Exhibit B, The Contract Administrator shall be the sole arbitrator of what shall be considered "reasonable" under this provision.
- C. The Consultant shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by the Consultant. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

V. INSURANCE/INDEMNIFICATION

- A. The Consultant shall procure and maintain during the life of this contract, such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Consultant or by any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation demonstrating it has obtained the policies required by Exhibit C.
- B. Any insurance provider of Consultant shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result from any acts or omissions by the Consultant or its employees and agents occurring in the performance of or breach in this Agreement.

VI. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Consultant agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act (MCL 37.2209) The Contractor further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.
- B. Living Wage. The Consultant is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code and agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Consultant agrees to pay those employees providing Services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VII. WARRANTIES BY THE CONSULTANT

- A. The Consultant warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.
- B. The Consultant warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Consultant warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Consultant warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

VIII. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to the Consultant except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Consultant acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Consultant. The Contract Administrator shall give the Consultant written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

IX. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Consultant access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Consultant of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

- A. The Consultant shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Consultant shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Consultant shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the

next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONSULTANT, it shall be addressed and sent to:

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor
301 E. Huron St., POB 8647
Ann Arbor, Michigan 48107
Attn:

XII. CHOICE OF LAW

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XIII. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e., deliverables) prepared by or obtained by the Consultant as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Consultant as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Consultant.

Unless otherwise stated in this Agreement, any intellectual property owned by Consultant prior to the effective date of this Agreement (i.e., preexisting information) shall remain the exclusive property of Consultant even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

XIV. CONFLICT OF INTEREST

Consultant certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Consultant further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

XV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

XVI. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Consultant with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior

representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Consultant and the City.

FOR CONSULTANT

FOR THE CITY OF ANN ARBOR

By _____

By _____
John Hieftje, Mayor

Type Name: _____

By _____
Jacqueline Beaudry, City Clerk

Its _____

Approved as to substance

Steven D. Powers, City Administrator

Sumedh Bahl, Community Services Area Administrator

Approved as to Form and Content

Stephen K. Postema, City Attorney

SAMPLE AGREEMENT EXHIBITS

EXHIBIT A

(negotiated scope of work based on accepted terms of Proposal)

EXHIBIT B

(negotiated compensation based on accepted terms of Proposal)

EXHIBIT C

INSURANCE REQUIREMENTS

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall provide certificates of insurance to the City on behalf of itself, and when requested any subcontractor(s).

- A. The certificates of insurance shall meet the following minimum requirements.
1. Errors or Omissions or Professional Liability insurance in an amount not less than \$1,000,000 protecting Consultant and its employees.
 2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit
 3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground Coverage or Pollution. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or Property
Damage Liability, or both combined
\$2,000,000 Per Job General Aggregate
\$1,000,000 Personal and Advertising Injury
 4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent.. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
 5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

- B. Insurance required under V.A 2 of this contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.

- C. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Contractor supplies a copy of the endorsements required on the policies. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.

APPENDIX B
NON-DISCLOSURE AGREEMENT

BETWEEN _____ AND THE CITY OF ANN ARBOR

Whereas, the City of Ann Arbor, with municipal offices at 301 E. Huron Street, Ann Arbor 48107 (“City”) is the owner of certain confidential information relating to _____, which is or may be classified as exempt or restricted information under the Michigan Freedom of Information Act (“Confidential Information”).

Whereas, “[Click to Type Receiver]” (referred to as “Receiver”) is desirous of receiving, reviewing, and/or evaluating the Confidential Information for the sole and exclusive purpose of gathering information for the “[Click to Type Development]” .

Therefore, it is agreed this ____ day of “[Click to Type Month]” , “[Click to Type Month]” :

That, the City shall, in its sole discretion, disclose to Receiver some or all of the Confidential Information based on Receiver’s request for:

- “[Click to Type Items Requested]”

It is understood that Receiver will secure at its sole cost any and all licenses, authorizations or other intellectual property rights necessary for the transfer of Confidential Information in the format requested by Receiver. Receiver will be required to provide documentation of it having all necessary licenses, authorizations or rights prior to transfer of the Confidential Information in the requested format.

That, Receiver shall hold and use Confidential Information only for the above-stated purpose of this Agreement and shall restrict disclosure of such Confidential Information to its employees with a need to know. Each employee of Receiver identified as “need to know” in connection with the receipt, review or evaluation of the Confidential Information shall be required to execute a Non-Disclosure Agreement under the same terms as stated herein. The City shall be provided with a copy of the executed employee Non-Disclosure Agreements and a master list of the employees, their respective jobs, and the reason for their classification as “need to know.”

That, Receiver will hold the Confidential Information or any part thereof in strict confidence and will not permit any disclosure thereof to any person or persons outside its organization and not use or derive any direct or indirect benefit from the Confidential Information or any part thereof without the prior written consent of the City. Receiver agrees that it will not disseminate in any manner any part of the Confidential Information.

If the Receiver receives a subpoena, request from an administrative agency or order from a court that requires Receiver to disclose all or any of the Confidential Information, the Receiver shall notify the City immediately, including a copy of the subpoena, request or order, and shall act in cooperation with the City to seek a protective order to prevent or limit disclosure and/or impose a non-disclosure obligation on the recipient(s). Recipient shall include a copy of this Non-Disclosure Agreement along with the Confidential Information it produces or discloses. Confidential Information disclosed in accordance with this paragraph shall remain Confidential Information for all other purposes.

That, Receiver will not make or authorize to be made any copies of any reports, plans, drawings or electronic data files supplied by the City and showing or describing or embodying the Confidential Information unless authorized by the City in writing. At any time and for any reason, prior to the completion of the work performed by the Receiver, the City may request and Receiver agrees it will return all of the said reports, plans, drawings or electronic data files together with any reports, drawings or electronic data files, including any independent notations of the Confidential Information, made by Receiver showing or describing or embodying the Confidential Information or any part thereof to the City immediately. After completion of the work, the Receiver shall return to the City any drawings, extracts, reproductions, or other documentation comprising the Confidential Information, in whatever format or media, including any independent notations of the Confidential Information made by Receiver showing or describing or embodying

the Confidential Information or any part thereof. In addition, access shall be controlled by the Receiver to all Confidential Information generated as part of the work performed by the Receiver. Although the Receiver is permitted to maintain copies of their work, dissemination of this Confidential Information is not permitted without written authorization from the City.

That, the restrictions on the use or disclosure of Confidential Information by Receiver shall not include any information which:

1. at the time of disclosure to Receiver was known to Receiver free of restriction and such previous knowledge is evidenced by documentation in the possession of Receiver. A copy of which documentation will be provided to the City if requested by the City; or
2. is publicly known or later made publicly known by the City; or
3. is evidenced by documentation in the possession of Receiver as being received from a third party to this Agreement who: (a) has the legal right to so furnish such information to Receiver, and (b) is not obligated to the City to keep such information confidential; or
4. is approved for release in writing by the City.

That, nothing in this Agreement shall be construed as conferring to Receiver any right of ownership in the Confidential Information or license to use any, patents, industrial designs, copyrights or other intellectual property rights owned or licensed by the City.

That, nothing in this Agreement shall be construed as restricting the City's right to restrain use or dissemination of the Confidential Information in accordance with applicable federal, state or local law and regulation or at common law.

Receiver acknowledges that a breach by him/her of the provisions of this Agreement will cause the City irreparable damage for which the City cannot be reasonably or adequately compensated in damages. The City shall therefore be entitled, in addition to all other remedies available to it including, but not limited to, attorney fees and costs, to injunctive and/or other equitable relief to prevent a breach of this Agreement, or any part of it, and to secure its enforcement.

This Agreement shall be construed in accordance with the laws of the State of Michigan.

This Agreement and any amendments hereto may be executed by facsimile signature and in any number of counterparts, all of which taken together shall constitute one and the same instrument.

CITY OF ANN ARBOR

"[Click to Type Applicant Name]"

By: _____

By: _____

Steven D. Powers

Print Name: "[Click to Type Name]"

Title: City Administrator

Title: "[Click to Type Title]"

Approved as to substance:

Sumedh Bahl, Community Services Area
Administrator

Approved as to form:

Stephen K. Postema
City Attorney

